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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,753	02/06/2002	Abraham Amir	02/23230	4762

7590 12/17/2002

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EXAMINER

COE, SUSAN D

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 12/17/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/066,753

Applicant(s)

AMIR ET AL.

Examiner

Susan Coe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 9-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: _____.

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DETAILED ACTION

1. Claims 1-14 are currently pending.

Election/Restrictions

2. Applicant's election of Group I, claims 1-8 in Paper No. 5, dated November 25, 2002, is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

3. Claims 9-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in Paper No. 5.

4. Claims 1-8 are currently pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, and 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 4,469,676.

Applicant's claims are drawn to a method of treating a skin contour irregularity by introducing cartilage producing cells into the irregularity.

US '676 teaches a method of treating wrinkles by injecting cartilage cells into the wrinkle (see claims).

6. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Park et al. (Facial Plastic Surgery (1995), vol. 11, no. 4, pp. 278-283).

Park teaches implanting chondrocytes into the skin. The chondrocytes are harvested and cultured. The cells harvested from the subject. Park teaches using the chondrocyte implants in facial cosmetic procedures. This is considered to encompass treating "facial contour irregularities."

7. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Kim et al. (Plastic and Reconstructive Surgery (1994), vol. 94, no. 2, pp. 233-237).

Kim teaches implanting chondrocytes into the skin. The chondrocytes are harvested and cultured. The cells are bovine articular chondrocytes and they are implanted in mice. Kim teaches using the implants in cosmetic surgery. This is considered to encompass treating "facial contour irregularities."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,469,676.

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As discussed above, US '676 teaches treating skin contour irregularities by injecting cartilage into the irregularity. US '676 does not specifically teach using cartilage harvested from the subject, a syngeneic source, or an allogeneic source. However, based on the teaching of US '676 of using cartilage harvested from a different species than the subject, a person of ordinary skill in the art would have a reasonable expectation that using cartilage harvested from the subject, a syngeneic source, or an allogeneic source would be successful. If cells from a xenogeneic source do not produce adverse effects, it is reasonable to expect that cells from the subject, a syngeneic source or an allogeneic source would also not produce adverse effects while still imparting the same benefits to the skin. Therefore, a person of ordinary skill in the art would be motivated to use cartilage cells from the subject, a syngeneic source or an allogeneic source in the skin treatment method taught by US '676.

9. Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park et al.

As discussed above, Park teaches using chondrocyte implants in facial cosmetic procedures. Park does not specifically teach that the procedures treats rhytids, subcutaneous defects or depression. However, treating these types of facial defects are well known irregularities to treat using facial cosmetic procedures. Therefore, a person of ordinary skill in the art would reasonably expect that the method of Park could be used to treat these skin irregularities.

10. Claims 1, 2, and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim et al.

As discussed above, Kim teaches using chondrocyte implants in cosmetic procedures. Kim does not specifically teach that the procedures treats rhytids, subcutaneous defects or

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depression. However, treating these types of facial defects are well known irregularities to treat using cosmetic procedures. Therefore, a person of ordinary skill in the art would reasonably expect that the method of Kim could be used to treat these skin irregularities.

Kim also does not specifically teach using cartilage harvested from the subject, a syngeneic source, or an allogeneic source. However, based on the teaching of Kim of using cartilage harvested from a different species than the subject, a person of ordinary skill in the art would have a reasonable expectation that using cartilage harvested from the subject, a syngeneic source, or an allogeneic source would be successful. If cells from a xenogeneic source do not produce adverse effects, it is reasonable to expect that cells from the subject, a syngeneic source or an allogeneic source would also not produce adverse effects while still imparting the same benefits to the skin. Therefore, a person of ordinary skill in the art would be motivated to use cartilage cells from the subject, a syngeneic source or an allogeneic source in the skin treatment method taught by Kim.

11. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner
December 3, 2002


LEON B. LANKFORD, JR.
PRIMARY EXAMINER